

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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:
WORLD WRESTLING FEDERATION :
ENTERTAINMENT, INC., :
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Plaintiff, :
:
-against- : MEMORANDUM DECISION
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3:01 CV 2317 (GLG)
:
WILLIAM E. DALEY AND :
SILVERMAN ENTERTAINMENT, INC., :
:
Defendants. :
:
:
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Plaintiff World Wrestling Entertainment, Inc., (formerly known as "World Wrestling Federation Entertainment, Inc." and hereinafter "plaintiff") moves to dismiss **[Doc. #18]** Counts One through Six of defendants' Counterclaim, on the ground that they fail to state a claim upon which relief may be granted. For the reasons set forth below, plaintiff's motion to dismiss is GRANTED in part and DENIED in part.

Standard of Review

In ruling on this motion to dismiss, the Court must accept as true all factual allegations of the Counterclaim and must draw all reasonable inferences in favor of the nonmoving party, in this case, defendants. Ganino v. Citizens Utilities Co., 228

F.3d 154, 161 (2d Cir. 2000). Dismissal is proper only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). However, while the pleading standard in federal court is a liberal one, bald assertions and conclusions of law will not suffice. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996); see also Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995) (holding that conclusory allegations as to the legal status of defendants' acts need not be accepted as true for purposes of ruling on a motion to dismiss); see generally 2 Moore's Federal Practice § 12.34[1][b] (3d ed. 2001).

Background

Plaintiff is a Delaware corporation headquartered in Stamford, Connecticut. Plaintiff owns and promotes the World Wrestling Federation. Defendant William E. Daley (hereinafter "Daley") is a citizen of Maine and was engaged by plaintiff to "referee" professional wrestling matches.

In September 2001, Daley failed to appear for scheduled performances at plaintiff's wrestling events in Toronto, Canada. Daley advised plaintiff in writing later that month that he intended to terminate his relationship with plaintiff and commence litigation.

In early December 2001, Daley filed a Notice of Claim against plaintiff under Maine law, asserting claims of negligence, intentional torts, contract violations and discrimination. A few days later, plaintiff notified Daley that it was terminating one of the agreements without cause. Plaintiff then filed this lawsuit. Defendants' answer contained a Counterclaim in which six counts are set forth. Plaintiff has moved to dismiss all six counts of the Counterclaim.

Discussion

Count One of the Counterclaim alleges a violation of § 31-49 of the Connecticut General Statutes in that plaintiff failed to take corrective measures to ensure defendant Daley's safety. As plaintiff points out, however, § 31-49 does not confer upon an individual a private cause of action for violation of the statute. See, e.g., Mendes v. Jednak, 92 F. Supp. 2d 58, 64 (D. Conn. 2000) (agreeing with defendants' argument that § 31-49 did not give rise to an independent private right of action) (citing Swaney v. Pfizer, Inc., 1999 WL 185138 (Conn. Super. Mar. 17, 1999)); McMahon v. Hoffman Court Condominium Ass'n, 1994 WL 281998, at *1 (Conn. Super. Jun. 16, 1994). Therefore, since Count One alleges nothing more than a violation of § 31-49, plaintiff's motion to dismiss that count is granted without prejudice. Defendants are given leave to amend Count One in

order to replead it as a negligence claim.

Plaintiff argues that Counts Two through Five of the Counterclaim must also be dismissed because they too allege a violation of § 31-49. However, each Count states a separate common law claim and the reference to § 31-49 is simply an element of each distinct cause of action. Count Two alleges constructive discharge, Count Three a breach of the implied covenant of good faith and fair dealing, Count Four negligent infliction of emotional distress, and Count Five intentional infliction of emotional distress. Accordingly, plaintiff's motion to dismiss Counts Two through Five is denied.

Count Six of the Counterclaim alleges that plaintiff tortiously interfered with the contractual relationship between plaintiff and defendants. Plaintiff argues that Count Six fails to state a claim upon which relief may be granted because a tortious interference cause of action lies only when an independent third party adversely affects the contractual relations of two other parties. We agree.¹ See Kelly v. City of Meriden, 120 F. Supp. 2d 191, 199 (D. Conn. 2000) (citing Wellington Sys. v. Redding Group, 49 Conn. App. 152, 168 (1998)). Moreover, even if the alleged tortfeasor is an agent of one of the contracting parties, and therefore only *indirectly* a party to

¹ Apparently, defendants also agree with plaintiff's argument since they did not address this issue in their Memorandum of Law in Opposition to Plaintiff's Motion to Dismiss.

the contract, there is usually no liability² for such interference. See Taylor v. Maxxim Medical, Inc., No. 3:99CV338(AHN), 2000 WL 630918, at *3 (D. Conn. March 23, 2000); see also Malik v. Carrier Corp., 202 F.3d 97, 109 (2d Cir. 2000) (holding that an agent acting within the scope of his authority cannot be held liable for interfering with a contract between his principal and a third party). However, there is no allegation here that an agent acting outside the scope of his authority interfered with the contractual relations between plaintiff and defendants. Therefore, since Count Six alleges that plaintiff tortiously interfered with its own contract, it fails to state a claim upon which relief may be granted. Consequently, plaintiff's motion to dismiss Count Six is granted.

Conclusion

For the reasons set forth above, plaintiff's motion to dismiss Counts One and Six **[Doc. #18]** of defendants' Counterclaim is GRANTED. Plaintiff's motion to dismiss Counts Two, Three, Four and Five of defendants' Counterclaim is DENIED. Defendants are given leave to amend Count One in order to replead it as a negligence claim.

² An agent can be held liable for tortious interference if he "did not act legitimately within his scope of duty...." Malik v. Carrier Corp., 202 F.3d 97, 109 (2d Cir. 2000).

SO ORDERED.

Dated: August 1, 2002
Waterbury, CT

_____/s/_____
Gerard L. Goettel
United States District Judge